

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR
THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929**

WP(C).No. 21972 of 2005(N)

PETITIONER:

**NAMBIYATTUKUDY FOOD AND SPICES,
KOOVAPPADY, PERUMBAVOOR, REPRESENTED BY ITS
MANAGING PARTNER, SUSAN MATHEW.**

BY ADV. SRI.R.MURALIDHARAN (ARoor)

RESPONDENTS:

- 1. ADDL. SALES TAX OFFICER,
1ST CIRLCE, PERUMBAVOOR.**
- 2. DEPUTY COMMISSIONER(APPEALS),
COMMERCIAL TAXES, ERNAKULAM.**
- 3. DEPUTY TAHSILDAR(REVENUE RECOVERY),
TALUK OFFICE, KUNNATHUNADU.**

BY GOVT.PLEADER SRI.R.LAKSHMI NARAYANAN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PETITIONER'S EXHIBITS:-

- Ext.P1:** Copy of the assessment order passed by the 1st respondent for 2001-02 dtd.30.09.2004.
- Ext.P2:** Copy of appeal filed by the petitioners before the 2nd respondent dated 5.1.2005.
- Ext.P3:** Copy of the early hearing petition filed by the petitioners before the 2nd respondent dated 5.1.2005.
- Ext.P4:** Copy of the notice issued by the 3rd respondent under Section 7 of the RR Act dtd.4.7.2005.
- Ext.P5:** Copy of the demand notice issued by the 3rd respondent under Sec.34 of the RR Act dated 4.7.2005.

RESPONDENTS' EXHIBITS:- Nil.

(true copy)

P.S. TO JUDGE.

Kvs/-

K. Balakrishnan Nair & T.R. Ramachandran Nair, JJ.

W.P.(C).NO.21972 of 2005-N

Dated this the 13th day of September, 2007

JUDGMENT

Balakrishnan Nair J.

This writ petition was referred to the Division Bench on the ground that Writ Appeal No.31/2005 was pending before the Division Bench, in which the judgment of a learned Single Judge in Writ Petition No.27756/2004 was under challenge. The petitioner's case was similar to that of the petitioner in that writ petition. The above Writ Appeal has since been dismissed as infructuous.

2. What is under challenge in this writ petition is an assessment order which is produced as Ext.P1. Against Ext.P1, the petitioner has already invoked the appellate remedy by filing Ext.P6. Learned counsel for the petitioner points out that there is a recent decision of the Apex Court which is in favour of the petitioner, reported in **Peekay Re-rolling Mills (P) Ltd. v. Asst. Commissioner and another** ((2007) 6 VST 541). Since the petitioner has already invoked the appellate remedy against Ext.P1, it is unnecessary for this court to decide this writ petition on merits, as the remedy under Article 226 of the Constitution of India is not concurrent.

(See the decision of this court in **Mc Dowell & Co. Ltd. v. Asst. Commissioner** – 1985 KLT 428)

Accordingly, the writ petition is closed without prejudice to the contentions of the petitioner and his rights to move the appellate authority for early disposal of the appeal.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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